

**COMMISSION IMPLEMENTING REGULATION (EU) 2016/306****of 3 March 2016****amending Implementing Regulation (EU) No 1283/2014 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community <sup>(1)</sup> ('the basic Regulation'), and in particular Article 11(3) thereof,

Whereas:

**1. PROCEDURE****1.1. Previous investigations and existing anti-dumping measures**

- (1) The anti-dumping measures in force on imports of certain tube and pipe fittings originating, inter alia, in the Republic of Korea were imposed by Council Regulation (EC) No 1514/2002 <sup>(2)</sup> ('the original investigation' and 'the original measures').
- (2) In October 2008, these measures were extended by Council Regulation (EC) No 1001/2008 <sup>(3)</sup> following an expiry review pursuant to Article 11(2) of the basic Regulation.
- (3) In December 2014, the measures were further extended by Commission Implementing Regulation (EU) No 1283/2014 <sup>(4)</sup> following a second expiry review pursuant to Article 11(2) of the basic Regulation ('the measures in force').
- (4) The anti-dumping duty currently applicable to exports from all companies in the Republic of Korea is 44 %, based on the injury margin determined in the original investigation.

**1.2. Request for a partial interim review**

- (5) In January 2015, the Commission received a request for a partial interim review pursuant to Article 11(3) of the basic Regulation. The request is limited in scope to the examination of dumping as far as TK Corporation, a Korean exporting producer, is concerned and it was lodged by that exporting producer. In its request, the exporting producer claimed that the circumstances on the basis of which measures were imposed have changed and that these changes are of a lasting nature. The exporting producer provided prima facie evidence that the continued imposition of the measure at its current level was no longer necessary to offset injurious dumping.

**1.3. Initiation of a partial interim review**

- (6) Having determined, after informing the Member States, that sufficient evidence existed to justify the initiation of a partial interim review limited to the examination of dumping as far as the exporting producer is concerned, the Commission announced by a notice published on 18 February 2015 in the *Official Journal of the European Union* <sup>(5)</sup> ('the Notice of Initiation') the initiation of a partial interim review in accordance with Article 11(3) of the basic Regulation, limited in scope to the examination of dumping in respect of the exporting producer.

<sup>(1)</sup> OJ L 343, 22.12.2009, p. 51.

<sup>(2)</sup> OJ L 228, 24.8.2002, p. 1.

<sup>(3)</sup> OJ L 275, 16.10.2008, p. 18 as last amended by Implementing Regulation (EU) No 363/2010 (OJ L 107, 29.4.2010, p. 1).

<sup>(4)</sup> OJ L 347, 3.12.2014, p. 17.

<sup>(5)</sup> OJ C 58, 18.2.2015, p. 9.

- (7) The Commission officially informed the exporting producer, the authorities of the exporting country and the Union industry of the initiation of the partial interim review investigation. Interested parties were given the opportunity to make their views known in writing and to be heard.

#### 1.4. Investigation

- (8) In order to obtain the information necessary for its investigation, the Commission sent a questionnaire to the exporting producer and received a reply within the deadline set for that purpose.
- (9) The Commission sought and verified all information it deemed necessary for the determination of dumping. A verification visit was carried out at the premises of the exporting producer.

#### 1.5. Review investigation period

- (10) The investigation of the level of dumping covered the period from 1 January 2014 to 31 December 2014 ('the review investigation period').
- (11) In addition to those data, the exporting producer also provided cost and sales data for 2013 and proposed extending the review investigation period by adding the year 2013 to increase the representativeness of its sales volumes to the Union. However, the Commission established that adding 2013 Union sales would not increase the representativeness in terms of volume (as compared to overall sales or production volume) or types of sales (see recital 29 below). Therefore, the Commission had no sufficient reason to deviate from the usual 12-month period to serve as a review investigation period for a representative finding with regard to dumping.
- (12) Following final disclosure, the exporting producer reiterated its claim that 2013 should be added to the review investigation period to increase its representativeness. It argued that comparisons with factors such as total production volume were not relevant and that by adding 2013 to the review investigation period it became more representative in terms of additional product types, sales volume and turnover.
- (13) The basic Regulation does not specifically state how the representativeness of the review investigation period should be measured. In this case, the volumes allegedly sold by the exporting producer on the Union market during 2013 were less than half of the volumes allegedly sold on the Union market during the review investigation period, whereas its total sales and production volumes were in the same range for both years. It is thus clear in this case that in relative terms the addition of 2013 would decrease the representativeness of the exporting producer's Union sales whereas in absolute terms it would only provide limited improvement.
- (14) Therefore, the Commission confirms that there is no valid justification for extending the review investigation period beyond the one-year period usually applied by the Commission.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (15) The product under review is tube and pipe fittings (other than cast fittings, flanges and threaded fittings), of iron or steel (not including stainless steel), with a greatest external diameter not exceeding 609,6 mm, of a kind used for butt-welding or other purposes, originating in the Republic of Korea, currently falling within CN codes ex 7307 93 11, ex 7307 93 19 and ex 7307 99 80 ('the product concerned').

### 2.2. Like product

- (16) The review investigation confirmed that the product produced by the exporting producer, sold domestically and exported to the Union and other export markets, has the same basic physical, technical and chemical characteristics and basic uses as the products sold in the Union by the Union industry.

- (17) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

### 3. DUMPING

#### (a) *Normal value*

- (18) The Commission first examined whether the total volume of domestic sales for the exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by the exporting producer of the like product on the domestic market were representative.
- (19) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union.
- (20) The Commission then examined whether the domestic sales by the exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that most product types were representative.
- (21) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (22) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
  - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (23) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the review investigation period.
- (24) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the review investigation period, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
  - (b) the weighted average price of this product type is below the unit cost of production.
- (25) The analysis of domestic sales showed that a large majority of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.
- (26) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade, or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

- (27) Normal value was constructed by adding the following to the average cost of production of the like product of the exporting producer during the review investigation period:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period; and
  - (b) the weighted average profit realised by the exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period.
- (28) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.
- (b) *Export price*
- (29) In the review investigation period only negligible volumes of the product concerned were sold by the exporting producer to the Union, representing between 0,1 % and 0,3 % of its production volume (range given for reasons of confidentiality). In addition, for a number of transactions the exporting producer could not convincingly demonstrate that the anti-dumping duty had been effectively paid, which casts doubt on whether the goods had been released for free circulation in the Union customs territory. Moreover, those sales were all made to three customers for specific projects with their own specifications for fittings. In addition, the sales were made as a 'package' with other fittings and products that were not product concerned. In this context, the risk of cross-compensation was deemed substantial. For the above reasons, no meaningful analysis of dumping based on Union sales of the product concerned from the exporting producer during the review investigation period could be made.
- (30) In the absence of sufficient export volumes to the Union, exports to other third countries were considered for the determination of the export price. It was found that the exporting producer has four major export markets, which together cover over 50 % of the exporting producer's export sales to third countries during the review investigation period. The remainder consists of 39 other export destinations, each accounting for between 0,1 % to 5 % of the exporting producer's export sales. The export prices to these countries vary enormously reflecting the disparate nature of each market. Many of these disparate factors (such as the conditions of competition on each market) are not known. Therefore, it was further analysed whether one of the exporting producer's major export destinations could be used as a proxy for the Union market.
- (31) The United Arab Emirates ('UAE') is the largest export market for the exporting producer and accounted for 15 %-18 % of the exporting producer's export sales in weight and 15 %-18 % in value during the review investigation period. However, the UAE does not have domestic producers of the product concerned. It is therefore deemed to be rather different in terms of economic structure compared to the Union market.
- (32) As in the expiry review resulting in Regulation (EU) No 1283/2014, it was considered appropriate to analyse the exporting producer's sales to the United States ('US'), which was the exporting producer's second biggest export destination in the review investigation period. The investigation confirmed that the US market is of a similar size to the Union market, with many domestic producers but also with a large proportion of imports. It also confirmed that the US market, in the review investigation period, had low import tariff rates and that no anti-dumping duties were applicable on imports from Korea, making it a very competitive market. Furthermore, the US is indeed a major destination for exports from Korea in general and also for the exporting producer concerned, representing 7 % to 12 % of its production volume and 11 % to 14 % of its export sales during the review investigation period.
- (33) Therefore, based on the merits and specificities of this case it was considered that in this particular investigation the US would constitute a reasonable basis for establishing an export price in the absence of sufficient export volumes to the Union. The verified export price of the exporting producer to the US was thus used for establishing an export price, adjusted back to an ex-works level by taking into account, where appropriate, for the costs of, inter alia, transport, duties and taxes.
- (34) Following final disclosure, the exporting producer contested that its Union sales transactions could not be used for establishing a representative export price, both on legal and on factual grounds.

- (35) Firstly, the exporting producer claimed that the export price can only be considered as unreliable by the Commission if it is established pursuant to Article 2(9) of the basic Regulation that there is an association or compensatory arrangement between the exporting producer and the importer or a third party. In all other cases, the Commission would have to base the calculation of dumping on the (Union) export price and not to do so would entail a breach under Article 2.3 of the WTO Anti-dumping Agreement.
- (36) In this regard, the Commission does not agree with the narrow interpretation of Article 2(9) of the basic Regulation, which is not supported by case-law. There is indeed nothing in the provision of Article 2(9) of the basic Regulation that prescribes an investigating authority to rely on unrepresentative volumes of export sales whose level of prices could in any event not be regarded as meaningful given the circumstances explained in recital 29 and further discussed in detail in this section. Therefore, the claims of the exporting producer should be rejected.
- (37) Secondly, the exporting producer claimed, from a factual point of view, that its Union sales were not negligible, pointing to the number of transactions, product types and Member States involved in their alleged sales to the Union in 2013 and 2014. However, in the review investigation period only 14 invoices for sales to the Union were issued by the exporting producer. The very low tonnage represented by these alleged Union sales, as mentioned in recital 29 above, was not contested by the exporting producer.
- (38) Thirdly, the exporting producer claimed, from a factual point of view, that the fact that its export sales to the Union were for specific projects with their own specifications is not relevant and that it had provided positive evidence that no cross-compensation had taken place. In this respect it should be pointed out that it was stated in the disclosure that the nature of the sales on the Union market meant that there was a risk of cross-compensation with other products, although it is conceded that no evidence was identified to prove or disprove that cross-compensation actually took place during the review investigation period. Bearing in mind that the cross-compensation issue was raised in the disclosure as merely a risk, it was only one of the factors the Commission took into consideration when determining the representativeness of the Union sales (see recital 29).
- (39) Fourthly, the exporting producer claimed, from a factual point of view, that the Commission had received evidence that all goods had been released for free circulation on the Union market and that anti-dumping duties were paid or payable.
- (40) Following the disclosure the exporting producer replied to a request from the Commission to clarify its view on this matter in relation to the source documents available to the Commission. The provided documents confirmed that for transactions covering around half of the sales volume to the Union there were unexplained irregularities concerning the payment of duties. In particular, those transactions for which no evidence could be provided as regards the payment of the anti-dumping duty of 44 %, render these Union sales prices clearly unreliable as these sales, in all likelihood, have thus been made on the false assumption that anti-dumping duties are not payable.
- (41) Fifthly, TK Corporation argued that as the interim review was initiated using prima facie evidence concerning export sales to the Union that indicated a lower dumping margin, then it must have been possible (as part of the final determination of dumping) to calculate dumping margin based on Union sales. This claim was rejected. First, the evidence required for the initiation of an interim review is by nature substantially different from that on which the investigating authority based its final findings. Second, the investigation established that those sales could not be validly used for all the reasons discussed in this section. It is also noted that the mere possibility to calculate a dumping margin does not render the dumping margin compliant with the relevant provisions of the basic Regulation.
- (42) Hence, bearing in mind that the Union sales were of such low quantities in absolute and comparable terms and that, moreover, there were legitimate reasons to doubt the reliability of a significant share of these sales for other than volume-related reasons, the claim that the Commission wrongly ignored export sales to the Union for the determination of the export price is rejected.
- (43) Finally, the analysis and findings in recitals 32 and 33 above, which were not contested by the exporting producer, clearly demonstrate that due care was taken in the construction of the export price and that the US can be considered a reasonable basis for establishing export prices in the absence of reliable Union prices.

(c) *Comparison*

- (44) The Commission compared the normal value and the export price of the exporting producer on an ex-works basis.

- (45) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for inland and ocean freight, insurance, handling, loading and ancillary costs.

(d) *Dumping margin*

- (46) For the exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (47) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, is 32,4 %.

#### 4. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (48) In accordance with Article 11(3) of the basic Regulation, the Commission also examined whether the changed circumstances could reasonably be considered to be of a lasting nature.
- (49) In this regard the investigation showed that TK Corporation indeed has undergone structural changes that led to cost reduction and efficiency improvements. Notably, the company added a second factory in 2010 and a third in 2012. As a result of significant increase in capacity, the production lines and warehouses could be reorganised in a more efficient manner and costs substantially declined. This cost reduction has a direct impact on the dumping margin. The circumstance here described is unlikely to change in the foreseeable future in a manner that would affect these findings.
- (50) This change in circumstances can therefore be considered to be of a lasting nature and the application of the measure at its current level is no longer justified.
- (51) The Defence Committee of the EU Steel Butt-Welding Fittings Industry commented that despite the structural changes by which TK Corporation was said to have decreased costs and improved efficiency, TK Corporation's profitability (for the overall company) did not improve during the period 2012-2014. Therefore, the Defence Committee of the EU Steel Butt-Welding Fittings Industry expressed doubts on the lasting nature of changed circumstances and the impact thereof on the dumping margin.
- (52) The Commission analysed this argument. First, it needs to be noted that the lasting nature of changed circumstances is assessed with reference to the original investigation in 2002. Secondly, the profitability of a company and the trend thereof is determined by a range of factors, of which efficiency is only one. Thirdly, the cost reduction as mentioned in recital 49 relates only to costs that can be associated with the structural changes mentioned in the same recital. For example, the trend of average raw material costs, labour costs and energy costs is not directly associable with the efficiency gains brought about by the establishment of the two factories. Lastly, the Defence Committee of the EU Steel Butt-Welding Fittings Industry supported its claim by reference to the overall profitability figures of TK Corporation and not to those specifically related to the product concerned. The Commission therefore rejected this claim.

#### 5. ANTI-DUMPING MEASURES

- (53) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to propose to amend the duty rate applicable to the exporting producer and were given the opportunity to comment.
- (54) Following the review investigation, the proposed revised dumping margin and anti-dumping duty rate that would be applicable to imports of the product concerned manufactured by TK Corporation amounts to 32,4 %.
- (55) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EC) No 1225/2009,

HAS ADOPTED THIS REGULATION:

*Article 1*

The table in Article 1(2) of Regulation (EU) No 1283/2014 shall be amended by adding the following:

Country	Company	Rate of duty (%)	TARIC additional code
Republic of Korea	TK Corporation, 1499-1, Songjeong-Dong, Gangseo-Gu, Busan	32,4	C066
	All other companies	44,0	C999

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 March 2016.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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